

Chapter 1445. Variances, Special Exceptions and Conditional Uses.

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§ 1445-01. Purpose of Variances.

The variance procedures are intended to provide a means by which relief from dimensional standards may be granted from a particular application of the Cincinnati Zoning Code that is unreasonable and creates practical difficulties. Variances from the use regulations of this code are not authorized.

§ 1445-03. Purpose of Special Exceptions.

Special exceptions are permitted as exceptions to the performance standards of this code and require a careful review of such factors as location, design, configuration and relation to adjacent uses to determine the desirability of authorizing the exception on any given site. Special exceptions may or may not be appropriate in a particular location depending on the impacts on adjacent uses and how adverse impacts may be minimized through building design, building siting, location of driveway and parking and screening.

§ 1445-05. Purpose of Conditional Uses.

A conditional use is a use that has potential adverse impacts on the immediate neighborhood. Such impacts may interfere with the use and enjoyment of adjacent property and uses. The process for review of conditional use applications is designed to address such adverse impacts and minimize them where possible. A conditional use requires a careful review of its location, design, configuration and special impact to

determine, against specific standards, the desirability of permitting its establishment on a particular site.

§ 1445-07. Authority to Grant Variances, Special Exceptions and Conditional Uses.

The Zoning Hearing Examiner may grant variances, special exceptions and conditional uses, in accordance with the procedures and standards enumerated in this Chapter.

- (a) **Variances.** The examiner may not grant a variance that is greater than the minimum necessary relief demonstrated by the applicant or authorizes a change in use that would permit a use contrary to the use regulations of the applicable zoning district.
- (b) **Special Exceptions.** The examiner may consider applications only for those special exceptions specifically listed in Schedule 1445-07, List of Allowable Special Exceptions.
- (c) **Conditional Uses.** The examiner may, in accord with regulations applicable to the district in which the subject property is located, approve uses listed as conditional uses in the schedule of use regulations for a district or for a category of zoning districts. Conditional uses are also subject to the special provisions of the district use regulations in those districts where such conditional uses are authorized.

Schedule 1445-07: List of Allowable Special Exceptions

Standard	Chapter or § Reference
Buffer Yards along district boundaries	§ 1423-13
Building Placement Requirements	§ 1409-19, 1409-23
Commercial Continuity	§ 1411-17
Ground Floor Transparency	§ 1409-25, 1411-21
Location of Parking	§ 1409-27, 1425-17
Additional Development Regulations	Chapter 1419
Landscaping and Buffer Yards	Chapter 1423
Parking Lot Landscaping	§ 1425-31
Parking Lot Screening	§ 1425-29

§ 1445-09. Parties Entitled to Seek Variances, Special Exceptions and Conditional Uses.

Any property owner or authorized agent of the owner of the property affected may apply for variances, special exceptions and conditional uses.

§ 1445-11. Procedures for Application for Variances, Special Exceptions and Conditional Uses.

The procedures for the application and application review for variances, special exceptions and conditional uses are as follows:

- (a) **Application Form and Materials.** An application for a variance, special exception or conditional use must be filed with the Director of Buildings and Inspections, in accordance with the provisions of Chapter 1441, Application Procedures, Fees, Permits and Certificates.
- (b) **Application Procedures.** The following procedures apply to the review of applications for a variance, special exception or conditional use:
 - (1) The director has the duty to prepare a staff report on the application and transmit the staff report to the Zoning Hearing Examiner prior to the public hearing.
 - (2) The examiner has the duty to schedule and hold a public hearing on the completed application in accord with the procedures for conduct of the public hearing set forth in § 1443-07.
 - (3) Staff reports received by the examiner are to be considered at a public hearing. Following the conclusion of the public hearing and within ten working days, the examiner has the duty to take one of the following actions:
 - (A) Approve the application.
 - (B) Approve the application subject to specific conditions.
 - (C) Postpone a decision pending consideration of additional information.
 - (D) Deny the application.
- (c) **Coordinated Review and Approval of Applications.** Whenever, in addition to a variance, special exception or conditional use pursuant to this chapter, the applicant also requires another decision by the examiner, the applicant must simultaneously file all other required applications with the

director. All required notices must include reference to the request for all required examiner approvals.

Public Hearing Waiver. The examiner may waive the public hearing requirement on applications for a variance from side and rear yard and open space requirements and on all other applications for which public hearing waivers are specifically provided in this code. Applicants requesting a public hearing waiver must submit a site plan of the proposed project, signed by every concerned community organization identified by the Director of Buildings and Inspections and the owners of every parcel of abutting real property.

§ 1445-13. General Standards; Public Interest.

The Zoning Hearing Examiner may grant variances, special exceptions and conditional uses, in accordance with the procedures and standards enumerated in this chapter. The examiner may approve an application for a variance, special exception or conditional use if the proposal conforms with all applicable laws, ordinances and regulations and is in the public interest. In determining whether the work is in the public interest, the examiner has the duty to consider those factors listed below that are relevant to the work and apply them in light of his or her professional training and experience. The failure of the proposed work to conform to any single factor or guideline is not necessarily a sufficient basis for denial. The examiner has the duty to approve work that maximizes both the public interest and private benefits.

- (a) **Zoning.** The proposed work conforms to the underlying zone district regulations and is in harmony with the general purposes and intent of the Cincinnati Zoning Code.
- (b) **Guidelines.** The proposed work conforms to any guidelines adopted or approved by Council for the district in which the proposed work is located.
- (c) **Plans.** The proposed work conforms to a comprehensive plan, any applicable urban design or other plan officially adopted by Council, and any applicable community plan approved by the City Planning Commission.
- (d) **Traffic.** Streets or other means of access to the proposed development are suitable and adequate to carry anticipated traffic and will not overload the adjacent streets and the internal circulation system is properly designed.
- (e) **Buffering.** Appropriate buffering is provided to protect adjacent uses or properties from light, noise and visual impacts.
- (f) **Landscaping.** Landscaping meets the requirements of Chapter 1423, Landscaping and Buffer Yards.

- (g) **Hours of Operation.** Operating hours are compatible with adjacent land uses.
- (h) **Neighborhood Compatibility.** The proposed work is compatible with the predominant or prevailing land use, building and structure patterns of the neighborhood surrounding the proposed development and will not have a material net cumulative adverse impact on the neighborhood.
- (i) **Proposed Zoning Amendments.** The proposed work is consistent with any proposed amendment to the zoning code then under consideration by the City Planning Commission or Council.
- (j) **Adverse Effects.** Any adverse effect on the access to the property by fire, police, or other public services; access to light and air from adjoining properties; traffic conditions; or the development, usefulness or value of neighboring land and buildings.
- (k) **Blight.** The elimination or avoidance of blight.
- (l) **Economic Benefits.** The promotion of the Cincinnati economy.
- (m) **Job Creation.** The creation of jobs both permanently and during construction.
- (n) **Tax Valuation.** Any increase in the real property tax duplicate.
- (o) **Private Benefits.** The economic and other private benefits to the owner or applicant.
- (p) **Public Benefits.** The public peace, health, safety or general welfare.

§ 1445-15. Standards for Variances.

Subject to the other provisions of this Chapter, the Zoning Hearing Examiner may grant a variance from the requirements of the Cincinnati Zoning Code, provided the condition giving rise to the request for the variance was not created by the owner or any predecessor in title. In order to grant approval, the examiner has to find that requested variance is not contrary to the intent and purpose of this code and the zone district nor detrimental or injurious to the public health, safety and general welfare based on either of the following:

- (a) Owing to special circumstances or conditions pertaining to a specific piece of property, the strict application of the provisions or requirements of this code are unreasonable and would result in practical difficulties.
- (b) The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same district or vicinity.

§ 1445-17. Standards for Variances to Accommodate Persons with Disabilities.

The Zoning Hearing Examiner may authorize a variance from the provisions of the Cincinnati Zoning Code that limit the number of persons who may live together as a single-housekeeping unit in a dwelling unit on finding that all of the following circumstances apply:

- (a) The variance is necessary as a reasonable accommodation of persons with disabilities;
- (b) The denial of the variance would result in the denial of the equal opportunity of persons with disabilities to use and enjoy occupancy of a dwelling;
- (c) The variance is not materially detrimental to the public welfare or injurious to property in the district or vicinity in which the property is located; and
- (d) In a residential district, the maximum number persons that the director may authorize to live together as a single-housekeeping unit is eight.

§ 1445-19. Standards for Special Exceptions.

An application for a special exception may not be approved unless the Zoning Hearing Examiner determines that the proposed special exception is appropriate in the location proposed based on the following standards and, where applicable, the special standards for specific special exceptions. A special exception may be granted only if the examiner makes all of the following findings:

- (a) **Compliance With Code and District Purposes.** The proposed development will be consistent with the purposes of this code and the district where the use is located.
- (b) **No Substantial Impairment of Property Value.** The proposed development will not substantially diminish or impair the value of property within the neighborhood in which it is located.
- (c) **No Undue Adverse Impact.** The proposed development will not have an adverse effect on the character of the area or the public health, safety and general welfare. The proposed special exception will be constructed, arranged and operated so as to be compatible with the use and development of neighboring property in accord with applicable district regulations.
- (d) **Compliance with Other Standards.** The proposed development complies with all other standards imposed on it by this code.

§ 1445-21. Standards for Conditional Uses.

The Zoning Hearing Examiner may approve a conditional use if and only if the conditional use is specifically listed in the applicable zoning district use regulations.

§ 1445-23. Conditions of Approval.

In authorizing a variance, special exception or conditional use, the Zoning Hearing Examiner may impose such conditions that are determined to be in the public interest and necessary to mitigate any harmful effects of the variance, special exception or conditional use. The examiner may require a bond or other acceptable form of surety to insure compliance with the conditions imposed. These conditions must be expressly set forth in the examiner's decision granting the variance, special exception or conditional use.

§ 1445-25. Effect of Grant of Variance, Special Exception or Conditional Use.

The grant of a variance, special exception or conditional use does not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure but may merely authorize the preparation, filing and processing of applications for any permits and approval that may be required.

§ 1445-27. Limitations on Variances, Special Exceptions and Conditional Uses.

Subject to an extension of time granted under Chapter 1443, Zoning Hearing Examiner Procedures, a variance, special exception or conditional use expires two years after issuance in accordance with § 1443-09.

§ 1445-29. Revocation of Variances, Special Exceptions and Conditional Uses.

Violation of any condition or limitation on the grant of a variance, special exception or conditional use is a violation of this code and constitutes grounds for revocation of the variance, special exception or conditional use pursuant to Chapter 1451, Enforcement.

§ 1445-31. Appeals.

Any party with standing may appeal to the Zoning Board of Appeals pursuant to Chapter 1449, Zoning Board of Appeals, within 30 days of the decision of the Zoning Hearing Examiner.